FILE COPY

IN THE

Supreme Court of the United States

October Term, 1960

No. 241

THOMAS EISTRAT,

Petitioner,

vs.

WILLIAM F. SCHULTHEIS; et al.,

Respondents.

Petition for a Writ of Certiorari to the District Court of Appeal of the State of California

THOMAS EISTRAT
1920 S. Almansor Street
Alhambra, California
In Propria Persona

SUBJECT INDEX

	Page
Citations to Opinions Below	1
Jurisdiction	2
Questions presented for review	2
Constitutional provisions and statutes involved	3
Statement of the case	
The facts	3
The presentation of the Federal Question	9
Reasons for granting the writ	10
Conclusion	14

Appendices:

Appendix A — Constitutional and Statutory Provisions

Appendix B — Opinions below

TABLE OF AUTHORITIES AND LAWS

Cases

Page

Baltimore & Ohio Ry. Co. v. United States, 298 U. S. 349, 366 10

Chicot County Dist. v. Bank, 308 U. S. 371 13

Eistrat v. Brush Industrial Lumber Company, et al, 147 Cal. App. 2d, 628 ..... 8, 12

Elec. Fitting Corp. v. Thomas & Betts, 307 U. S. 241 12

Heiser v. Woodruff, 327 U. S. 726, 733 13

Lindheimer v. Illinois Bell Tel. 292 U. S. 151, 176 12

N. Y. Tel. v. Maltbie, 291 U. S. 645 12

Public Service Comm. v. Brashear Lines, 306 U. S. 204, 206 12

Stoll v. Gottlieb, 305 U. S. 165 ..... 13, 14

Statutes

Articles I, III, IV, VI of the United States Constitution and Amendment XIV 3

U. S. C. Section 1257(3) 2

U. S. C. Section 1946 Sec. 1 (10) 3

U. S. C. Sec. 11(a) 3

Codes

California Code of Civil Procedure, Sec. 1908 ..... 3, 13

IN THE

Supreme Court of the United States

October Term, 1960

No.....

THOMAS EISTRAT,

Petitioner,

vs.

WILLIAM F. SCHULTHEIS; et al.,

Respondents.

Petition for a Writ of Certiorari to the District Court of Appeal of the State of California

To the Honorable Chief Justice and to the Honorable Associate Justices of the Supreme Court of the United States of America:

Your petitioner, Thomas Eistrat, prays that a Writ of Certiorari issue to review the decision of the District Court of Appeal of the State of California, Second Appellate District, Division Three, entered in the above-entitled case on May 18, 1960.

Citations to Opinions Below

The judgment and orders of the trial court are unreported and are included in the Certified Record. The decision of the State District Court of Appeal is printed in Appendix B, hereto, and is reported in 181 A.C.A. 69, 5 Cal. Rptr. 77.

Jurisdiction

The decision of the District Court of Appeal of the State of California was entered on May 18, 1960 (Cert. Rec. Doc. H, Appx. B, infra). Petition for Rehearing was denied on June 14, 1960 (Cert. Rec. Doc. G). Petition for Hearing, After Decision of the District Court of Appeal, was denied by the Supreme Court of the State of California on July 12, 1960 (Cert. Rec. Doc. H). Application for Recall of Remittitur on Court's Own Motion was filed November 21, 1960 (Cert. Rec. Doc. I).

The jurisdiction of the Court is invoked under 28 U.S.C., Section 1257(3) (since a right to due process of law is claimed under the Fourteenth Amendment of the Constitution of the United States). On October 10, 1960 this Court made its order extending the time for filing petition for Writ of Certiorari in above-entitled cause to and including December 9, 1960.

Questions Presented for Review

1. Whether a litigant has been deprived of his property without due process of law and in contravention of his rights under the Fourteenth Amendment of the Constitution of the United States, where the state trial court receives final orders of a federal court in bankruptcy establishing his title to lumber, and the state courts then collaterally attack and avoid those federal judgments by untrue matters not in the record nor in evidence before the state courts?

2. Whether it is a denial of due process under the XIVth Amendment of the United States Constitution for the highest California state court in which appeal could be had to hold petitioner bound a portion

of a finding of a federal court it deems against petitioner, which finding was unnecessary to support the federal judgment which was final and wholely in petitioner's favor? The federal judgment was received in evidence. Federal and state case law prohibit such collateral attack.

3. Whether it is a denial of due process under the XIVth Amendment of the United States Constitution for the highest California state court in which appeal could be had to hold that a final bankruptcy court order in evidence *is not*, in respect to the matter directly adjudged, conclusive between the parties *and their successors in interest* by title subsequent to the commencement of the action, litigating for the same thing under the same title and in the same capacity, with actual or constructive notice of the pendency of the bankruptcy proceeding?

Constitutional Provisions and Statutes Involved

Art. I, Sec. 8, sub. 4; Art. III, Sec. 2; Art. IV; Art. VI of the United States Constitution and Amendment XIV thereto; U.S.C. 1946 Sec. 1(10), Chap. 1. Title 11; and Sec. 11(a), Chap. 2, Title 11, Bankruptcy Act; and California Code of Civil Procedure, Sec. 1908. They are printed in Appendix A, hereto.

Statement of the Case

The Facts

Each of these consolidated cases are from judgments for defendants in regard to the conversion of lumber from plaintiff's property in 1949. The lumber was taken during respondent Jone's bankruptcy pro-